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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,553	06/26/2003	Bryan M. Reed	P03176c1	5289
23702	7590	12/13/2005	EXAMINER	
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701			VARGOT, MATHIEU D	
			ART UNIT	PAPER NUMBER
			1732	
DATE MAILED: 12/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,553

Applicant(s)

REED ET AL.

Examiner

Mathieu D. Vargot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/26, 1/24</u> . | 6) <input type="checkbox"/> Other: _____ |

1.Applicant's election without traverse of Group II, claims9-18 in the reply filed on October 17, 2005 is acknowledged.

2.Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 is indefinite in failing to further limit the structure of the device. Structural limitations for the device should be inserted into the claim that relate to the structural limitations of the product made.

3.The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Freed et al (see 30, 52, 56 in the Figures).

Freed et al discloses the instant apparatus for cutting a circular hole in a blank employing a generally circular cutting edge (30,34) which is movable with respect to a base or press (52,56), the cutter being a trephine that rotates to cut through the sheet material acting as the blank. The language "an IOL" and "IOL optic" and "lens press" constitute functional limitations which the prior art device is inherently capable of performing. Hence, even though Freed et al does not disclose that the device shown therein functions to make an IOL, it is submitted that the structure to make an IOL is

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disclosed in the reference. Indeed, Freed et al cuts a circular piece of tissue that would have the instant IOL structure set forth in claim 9.

4.The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freed et al.

The applied reference discloses the basic claimed structure as set forth in paragraph 3, supra, Freed et al essentially lacking the aspects of a camera to view the cutting, dimensions of the product and certain particulars of the instant structure which would have been obvious variants over that shown in Freed et al. Cameras are conventional in the art and would have been obvious modifications to the structure of Freed et al to align and film the cutting. The exact dimensions of the product would have been clearly obvious dependent on desired use for same. Note that the cutting edge of the applied reference is countersunk under hood/engaging unit 26 as generally called for in instant claim 14. The engaging unit is submitted as being broadly inclusive of the instant lens pusher of claim 15. The upper punch body of claim 17 and interfitting relationship of claim 18 are generally well known in the art and would have been obvious modifications to the structure of Freed et al dependent on positioning means for the sheet being cut.

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5.The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kingston (col. 4, lines 10-12) discloses cutting a circular optical blank from a sheet by a revolving trepanning cutter—ie, a trephine.

6.Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mathieu D. Vargot whose telephone number is 571 272-1211. The examiner can normally be reached on Mon-Fri from 9 to 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni, can be reached on 571 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Vargot
December 8, 2005


Mathieu D. Vargot
Primary Examiner
Art Unit 1732

12/8/05